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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the fourth periodic report of Poland

Addendum

Information received from Poland on follow-up to the concluding observations*

[12 June 2008]

Additional information concerning implementation of recommendations 9, 10, 16, 19 and 20 formulated by the Committee against Torture (CAT/C/POL/CO/4) after consideration of the fourth periodic report the Republic of Poland on the implementation of the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the period from 1 August 1998 to 30 September 2004

Recommendation 9

The Committee notes the adoption of a "shortened trail procedure" as a component of the reform of the Code of Criminal Procedure (art. 387) and it would be concerned if it gave rise to undue pressure being brought to bear on suspects to avail themselves of the procedure (art. 2).

The State party should take all necessary measures to guarantee the voluntary nature of any such agreements.

1. Article 387 of the Code of Criminal Procedure offers the possibility of issuing a sentence in which the accused is found guilty of committing a crime and a penalty or a penal measure is imposed on him/her after admittance by the court of a sole evidence in the form of the testimony of the accused. Such institution is aimed at significantly shortening the proceedings before the court of first instance without violating the rights of the accused.

2. It was designed as a right of the accused, because the application for voluntary submission to penalty (regarding the passing of a sentence, the imposition of a certain penalty or a penal measure and the refraining from the conduct of evidence proceedings)

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may be submitted only by the accused or his/her defence counsel. What is more, the accused may submit such an application even in the situation in which s/he refuses to testify before the court. Such an application may be submitted at any time before the end of cross-examination of all the accused during the main hearing. The application may be submitted by the suspect during preliminary proceedings, but then it will also be considered during a hearing before an independent court. The application may only apply to a misdemeanour and may be effectively withdrawn by the time the court passes a sentence.

3. After a sentence is passed, there is a possibility of lodging a complaint against it pursuant to general principles. This means that either party may lodge an appeal with a court of second instance.

4. Article 387, paragraph 1, of the Code of Criminal Procedure indicates that the accused, at the time of submitting an application for voluntary submission to penalty, in the event that s/he has no defence counsel of his/her choice, may apply for nomination of an ex officio defence counsel. Practice shows that in such cases courts grant this type of motion and appoint ex officio defence counsels, particularly in fairly complicated matters.

5. The manner of regulation of the aforementioned institution and its application by independent courts only guarantee the voluntary nature of submission by the accused of an application for submission to penalty in a given matter.

Recommendation 10

The Committee regrets the lack of an appropriate system of legal aid in Poland and, in particular, the delay in submitting the draft law on access to free legal aid to the Parliament (Sejm) considering the impact that the delay might have on the protection of persons without resources (art. 2).

The State Party should take effective steps to expedite the adoption of the law on access to free legal aid in order to ensure appropriate protection and access to the legal system of persons without resources.

6. Access to free legal aid at the stage of court proceedings is guaranteed by the provisions of the Code of Criminal Procedure and the Code of Civil Procedure, as well as by the Act on court costs in civil cases. In both types of proceedings – penal and civil – the condition for the use of such free ex officio legal aid is demonstration by the accused, victim or a natural person who is a party to civil proceedings, that s/he is unable to cover the costs of legal representation without a harm to his/her own necessary maintenance or the maintenance of his/her family. Moreover, in civil proceedings, the appointment of an ex officio attorney may be requested, in addition to natural persons, also by legal entities and other persons having court capacity (art. 64 and art. 117 of the Code of Criminal Procedure). In addition, in penal proceedings, such a request may be submitted by a person who is not a party to the proceedings if his/her rights have been violated (art. 87 of the Code of Criminal Procedure).

7. Free legal aid is available in civil proceedings at the stage of court proceedings, and in penal proceedings – both at the stage of court proceedings and at the stage of preliminary proceedings (art. 78, para. 1, with reference to art. 71, para. 3, of the Code of Criminal Procedure).

8. Legal aid provided ex officio by defence counsels and attorneys is carried out by advocates and legal counsels appointed by the court and paid by the State Treasury. In 2007, the profession of an advocate was performed by 6,930 persons, and the profession of a legal counsel by 18,951 persons. The issue of access to free legal aid and out-of-court assistance was additionally regulated by draft law on access to free legal aid granted by the State to natural persons. On 19 October 2005, the Prime Minister submitted the Seym of the

Republic of Poland of the Fifth Term a draft law on access to free legal aid granted by the State to natural persons, together with draft executive acts. By means of a Regulation of the Minister of Justice of 6 February 2006, a Team was appointed for development of an amendment to the draft law on access to free legal aid. Then, on 18 May 2007, the draft of the amendment to the aforementioned law was submitted to the Seym of the Republic of Poland. Work on the aforementioned draft was not completed by the Seym of the Fifth Term. Currently this work is being continued by the Ministry of Justice. The objectives of the draft law on access to free legal aid are to be developed by 30 May 2008.

Recommendation 16

Prompt and impartial investigations

The Committee is concerned at allegations regarding the existence in the territory of Poland of secret detention facilities for aliens suspected of terrorist activities. The Committee takes note of the statement of the Polish delegation emphatically refuting all allegations about the existence of secret detention facilities in its territory (arts. 3, 12 and 16).

The Committee urges the State party to share information about the scope, methodology and conclusions of the enquiry into these allegations conducted by the Polish Parliament so that this matter can be put to rest.

9. Information about the alleged existence of secret Central Intelligence Agency prisons in Poland, where allegedly persons suspected of terrorist activity were supposed to be kept, were the subject of numerous press releases from the autumn of 2005. This information was reflected in speeches of MPs, including the Marshall of the Seym of the Fifth Term, addressing the need for thorough examination of the suppositions publicized by the mass media. The implementation of these expectations was the session of the Commission for Secret Service held on 21 December 2005, where MPs listened to information presented by the Minister – Co-ordinator of Secret Service Affairs. The Commission, after listening to the information presented by the Minister – Co-ordinator, did not undertake any actions which it would be obliged to undertake in case of identification of any violation of the binding law and international conventions ratified by Poland.

Recommendation 19

Hazing in the military

While the Committee acknowledges the progress made by the State party in decreasing the number of cases of abuse of conscripts in the army, it remains concerned at the high number of cases that continue to be reported (arts. 2 and 16).

The State party should eradicate hazing in the armed forces; continue implementing measures of prevention as well as ensure prompt, impartial and effective investigation and prosecution of such abuses; and report publicly on the results of any such prosecutions.

The State party should guarantee the rehabilitation of victims, including appropriate medical and psychological assistance.

10. Counteracting pathologies, in particular in the area of social relations, belongs to the priorities of educational activity implemented within the Armed Forces of the Republic of Poland. This sphere constitutes an area of on-going analysis and multi-directional actions taken by commanders of different levels, persons serving functions, as well as representative bodies of soldiers and specialized institutions of the national defence sector

(the Department of Education and Promotion of Defence, Military Police and the Supreme Military Prosecutor's Office).

11. Recommendations of the Committee against Torture are implemented by the national defence sector through, among other things, prevention activity, conducted both among post-secondary school pupils, and among soldiers and employees of the Army. During numerous classes, meetings and training sessions, issues of informal customs prevailing in military units are discussed, as well as manners of dealing with this problem. Persons participating in training are also informed about the rules of penal liability and disciplinary proceedings.

12. The Armed Forces of the Republic of Poland developed, among other things, a system of monitoring and recognition of the status of social relations. The established mechanisms, such as the Military Help Line and Internet Help Desk, surveys conducted among soldiers serving in the basic military service (including periodic surveys of the Military Bureau of Sociological Research), provide for identification of cases of improper conduct of soldiers within the area under examination. The evaluation of the status of social relations in military units and sub-divisions is a regular point of evaluation of the discipline, performed, among others, at the management level of the Ministry of the National Defence.

13. It should also be emphasized that soldiers, including victims of the so-called "wave", are able to take advantage of psychological preventive care. Military psychologists interfere in crisis situations, they operate help lines, they have duty hours in the afternoon, and their contact telephone numbers are made available to soldiers.

14. The undertaken organizational activities, including a system of official supervision and control, creation of sub-divisions which are uniform from the point of view of their background, prevention activity and strict penal and disciplinary reaction to perpetrators of forbidden acts, have brought about tangible results in the form of a drop in the number of this type of offences. According to the data of the Supreme Military Prosecutor's Office, in 2007, 196 perpetrators were identified of offences against the rules of conduct towards subordinates, persons with lower rank or those with a shorter record of serving in the Army, and for comparison, in 2006, 221 persons committed such offences.

15. A relevant factor affecting a drop in the number of offences is constituted by undertakings of the national defence sector aimed at making the Army a professional force, deriving from the development of the rules of recruitment, eliminating persons who do no wish to serve in the Army, as well as persons with a low level of education or those who are in conflict with the law. Moreover, positions of commanders are taken by professional non-commissioned officers, prepared to serve such functions during 10-month courses conducted in schools for non-commissioned officers.

16. It should be emphasized that providing the public with information about the result of penal proceedings in the cases concerned, as recommended by the Committee, is implemented within the limits of the binding law, through the use of the instrument in the form of the novelized institution of publicizing information, as specified in article 50 of the Penal Code.

17. Moreover, the information provided by the Polish Army about inconsistencies occurring with regard to social relations, is also based on co-operation with the media in this regard.

18. The activities which may soon positively affect the quality of social relations include implementation of the provisions of decision No. 285/MON of the Minister of the National Defence of 19 July 2006 on undertaking organizational actions for implementation of a new form of educational activity, as well as creation of educational structures in the national defence sector (not public). This will strengthen the humanity support of the commander,

within the scope of, among other things, creation of conditions for observation of the law and military discipline and prevention of unfavourable phenomena in the forces.

19. Currently the national defence sector is consulting a complex "Programme of Counteracting Crime and Pathology in the Armed Forces of the Republic of Poland", which covers actions and initiatives undertaken at all command levels within the scope of training and educational activity connected with the creation of military discipline, proper inter-personal relations, counteracting violence and education of citizens.

Recommendation 20

Minorities and other vulnerable groups

The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians (art. 16).

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

Introduction into the Penal Code of hate crimes based on sexual orientation

20. Upon consideration of the recommendation of the Committee, the National Prosecutor's Office expressed the position that it would be justified to undertake a legislative initiative aimed at an amendment to article 256 of the Penal Code and article 257 of the Penal Code through an imposition of a threat of penal sanctions for activities consisting of instigating hatred against persons having a different sexual orientation, and for an abuse of a group of persons or a person due to their/his/her sexual orientation. In the situation of undertaking work on an amendment to the Penal Code, Recommendation no. 20 regarding a need of introducing penalization of "hate crimes [...] based on sexual orientation", a body will be set up which is responsible for the amendment to the Penal Code and the Code of Criminal Procedure.

Counteracting discrimination, xenophobia, intolerance

21. Article 6 of the Law of 6 January 2005 on National and Ethnic Minorities and on Regional Language constitutes a prohibition of discrimination resulting from the fact that a person belongs to a national and ethnic minority or an entity using a regional language, and it obliges public authorities to undertake appropriate measures aimed at supporting actual equality in the area of economic, social, political and cultural life between persons belonging to minorities and persons belonging to the majority, and to protect persons who are objects of discrimination, hostility or violence, resulting from the fact that they belong to minorities, and to strengthen inter-cultural dialogue.

22. A sector leading in the process of counteracting discrimination and xenophobia is the Ministry of Internal Affairs and Administration. Its structures contain the Team for

Monitoring Racism and Xenophobia for the purpose of effective implementation of the rule of equal treatment due to ethnic origin.

23. The Team was entrusted with the fulfilment of tasks imposed on the Ministry of Internal Affairs and Administration in connection with the implementation of the National Programme of Counteracting Racial Discrimination, Xenophobia and Related Intolerance. This Programme is a result of international obligations of Poland with regard to implementing the recommendations contained in the final documents of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 31 August – 7 September 2001).

24. The objective of the Programme is implementation of actions aimed at combating xenophobia and racism, including anti-Semitism, and development in the Polish society of a culture of tolerance in the widest sense. Beneficiaries of the Programme will be Polish citizens belonging to national and ethnic minorities, foreigners – including immigrants and refugees – and other persons who may become an object of discrimination due to ethnic or racial reasons. Moreover, as part of the Programme, conferences and trainings are conducted for representatives of government administration to increase the level of their knowledge and awareness in the area of legal and administrative solutions concerning prevention and combating racism and discrimination due to ethnic reasons.

25. In addition, the Ministry of Internal Affairs and Administration signed an agreement with the Association of Citizens' Advice Bureaux within the scope of combating discrimination due to ethnic or national origin. As part of the agreement, the Association of Citizens' Advice Bureaux prepared, in 2007, a report containing a statistical analysis of matters lodged by customers who were complaining of discrimination due to ethnic or national origin and racial discrimination, xenophobia and anti-Semitism.

26. At the order of the Ministry of Internal Affairs and Administration, the Poznań Centre of Human Rights at the Institute of Legal Sciences of the Polish Academy of Sciences prepared the first part of the report on monitoring racist, xenophobic and anti-Semitic contents in the Polish press. The remarks and suggestions contained in the report will help in the future in the development of effective methods and instruments for combating hate speech.

Introduction in 2007 by the Chief Commander of the Police of a system of implementation of recommendations of international organizations with regard to human rights

27. As part of activities aimed at the development by the Police of the best possible standards of protection of human rights, in November 2007, the Chief Commander of the Police issued an instruction to develop Plans of Implementation by the Police in 2008-2009 of recommendations formulated by the Commissioner for Human Rights of the Council of Europe, the Committee against Torture and provisions contained in the programme of activities of the Government regarding execution of judgements of the European Court of Human Rights against the Republic of Poland. Currently, Task Teams are being appointed whose task is development of plans of implementation of individual recommendations in 2008-2009, and then monitoring of this process.

28. The function of project co-ordinators is served by Human Rights Advisors to the Chief Commander Advisors to Regional Chiefs of the Police.

29. As part of the above projects, Plans of Implementation of the Recommendations of the Committee against Torture will be developed, including but not limited to:

(a) Development of more effective programmes for protection of monuments and cemeteries of national minorities;

(b) Intensification of anti-discrimination activities;

(c) Development and implementation of a system of gathering, processing and analysing data concerning complaints and disciplinary proceedings, providing for an evaluation of observation by the Police of international human rights instruments to which Poland is a party.

30. Task Teams will be responsible for an overview of the actual state of affairs within the aforementioned areas, diagnosis of the situation, identification of areas requiring improvement and suggestion of complex solutions aimed at their implementation in the whole Police forces.

31. In 2010, an Evaluation Report will be developed which will evaluate the effectiveness of the implemented programmes and present recommendations concerning activities for the future.

Accession of Poland to the Law Enforcement Officer Training Programme for Combating Hate Crimes

32. On 24 October 2006, Poland joined the Law Enforcement Officer Training Programme for Combating Hate Crimes, implemented by the Organization for Security and Co-operation in Europe/Office for Democratic Institutions and Human Rights (ODIHR). The Department of Control, Complaints and Motions of the Ministry of Internal Affairs and Administration was assigned to serve the role of a co-ordinator of the Programme in Poland.

33. The Programme concerns the training of Police officers in various aspects of hate crime, including in particular conducting an investigation, exchange of information and co-operation with the prosecuting bodies. The Programme assumes the development of a strategy of combating hate crimes based on co-operation with the societies involved and development of an effective system of gathering and dissemination of data regarding hate crimes.

34. According to the adopted schedule, in 2007, study visits were to take place as well as workshops organized by ODIHR, and in 2008, it is planned to launch the training in the Police.

Educational and informational activity

35. The National Centre of Training of the Personnel of Common Courts and Prosecutors' Offices, in co-operation with the Department for Women, Family and Counteracting Discrimination in the Ministry of Labour and Social Policy, in 2007, continued to implement the project entitled "Role of prosecutors in effective counteracting of discrimination", as part of the Community Programme of Measures to Counteract Discrimination 2001 – 2006.

36. Addresses of the training project were prosecutors performing tasks in the area of counteracting discrimination due to race, ethnic origin, religion and denomination, age and sexual orientation.

37. The project was implemented in four training sessions, in total for approximately 240 prosecutors. Each training session, lasting 3.5 days, consisted of the following three modules:

(a) Raising awareness (self-perception, group identity, perception of others, prejudice, definition of discrimination);

(b) Implementation – concepts, methods, legal instruments (discrimination, victimization, equal chances, penal law vs. civil law, good practice models, social dialogue, procedures);

(c) Counteracting discrimination (manners of reacting to discriminating activities, structure of conflict, anti-discriminatory strategies).

38. The main measure aimed at prevention of cases of intolerance and hate towards minorities and other particularly exposed groups among inmates, is thorough education of prison officials and employees in the area of human rights and manner of dealing with inmates.

39. Moreover, issues falling within the scope of observation of human rights, including discrimination in the widest sense, were incorporated in the programmes of annual training of prison officials and employees dealing with consideration of complaints, requests and applications of inmates. During the training planned for 2008, the issues tackled so far, concerning the tasks of State administration to be fulfilled with regard to counteracting racism, xenophobia and related intolerance directed against national and ethnic minorities will be extended by issues of intolerance towards persons of different sexual orientation.

40. Issues of human rights and standards of executing temporary detention and penalty of imprisonment also constitute a regular element of training implemented for the penitentiary personnel (psychologists and educators). They are aimed at dissemination of knowledge concerning rights of persons deprived of their liberty, prevention of discrimination due to, among others, ethnic origin, denomination, sex and sexual orientation.

41. The enforcement of human rights in penitentiary institutions and centres of detention-on-remand is facilitated both by controls and supervision performed by organizational units of the prison system at all levels, as well as the transparency of the system, providing for monitoring of penitentiary institutions by institutions and organizations from outside the prison forces.

42. Great attention is paid to a thorough investigation of complaints of inmates concerning discrimination on the basis of nationality, ethnic origin or denomination.

43. Monitoring is also performed of disciplinary proceedings connected with unlawful conduct of prison officials towards inmates. Such events are incidental (in 2002, 4 cases were noted, 3 in 2003, 1 in 2004, none in 2005, 2 in 2006, and 1 by 30 September 2007), which proves the effectiveness of the actions of a didactic nature offered to officials and employees of the prison service.

44. Moreover, the Ministry of Health, supervised by the National Centre for AIDS, conducts educational and informational activities aimed at preventing HIV infection by raising public knowledge and awareness and by counteracting discrimination and stigmatization of persons living with HIV/AIDS. Such activities include, among others, social campaigns, publication of informational and educational materials (publications, leaflets, brochures), including the Information Bulletin of the National Centre for AIDS "Kontra" and the Internet Bulletin "e-Kontra", as well as Poland-wide training addressed to various social and professional groups, with special emphasis on the group of employees of the healthcare system. Poland-wide training is implemented by non-governmental organizations. The National Centre for AIDS also undertakes interventions in the event of discrimination of HIV-positive persons and persons suffering from AIDS, most commonly at the place of their work or at school.

Statistical data concerning hate crimes (data of 2003-2006)

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to the provisions of selected articles of the Penal Code[1] in 2003

Legal qualification / *Article of the Penal Code*	*Total convictions and conditional discontinuance*	*Including*							
		Convicts							
		Including							
					Deprivation of liberty				
		Total	*Only a fine*	*Restriction of liberty*	*Total*	*6 months-11 months*	*1 year*	*>1 year <2 years*	*Conditional discontinuance*
119, § 1	4	4	-	-	4	-	3	1	-
119, § 2	1	1	-	-	1	-	-	1	-
256	7	6	2	1	3	3	-	-	1
257	11	9	3	2	4	2	-	2	2

[1] Article 119

1. Whoever uses violence or makes unlawful threat towards a group of persons or a particular individual because of their national, ethnic, racial, political or religious affiliation, or because of their lack of religious beliefs, shall be subject to the penalty of deprivation of liberty for a term of between three months and five years.

2. The same punishment shall be imposed on anyone who incites commission of the offence specified under paragraph 1.

Article 256. Whoever publicly promotes a fascist or other totalitarian system of state or incites hatred based on national, ethnic, racial or religious differences or for reason of lack of any religious beliefs shall be subject to a fine, the penalty of restriction of liberty or the penalty of deprivation of liberty for up to two years.

Article 257. Whoever publicly insults a group of persons or a particular person because of their national, ethnic, racial or religious affiliation or because of their lack of any religious beliefs or for these reasons breaches the personal inviolability of another individual shall be subject to the penalty of deprivation of liberty for up to three years.

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to relevant provisions of the Penal Code in 2004

Legal qualification Article of the Penal Code	Total convictions and conditional discontinuance	Including: Convicts							
		Including: Convicts							
					Including: Deprivation of liberty				
		Total	Only a fine	Restriction of liberty	Total	Up to 11 months	1 year	Over 1 year to 2 years	Conditional discontinuance
119, § 1	3	3	2	-	1	-	-	1	-
119, § 2	-	-	-	-	-	-	-	-	-
256	7	7	1	3	3	2	-	1	-
257	12	8	2	-	6	6	-	-	4

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to relevant provisions of the Penal Code in 2005

Legal qualification Article of the Penal Code	Total convictions and conditional discontinuance	Including: Convicts							
		Including: Convicts							
					Including: Deprivation of liberty				
		Total	Only a fine	Restriction of liberty	Total	Up to 11 months	1 year	>1 year <2 years	Conditional discontinuance
119, § 1	6	6	-	1	5	1	4	-	-
119, § 2	-	-	-	-	-	-	-	-	-
256	-	-	-	-	-	-	-	-	-
257	16	16	2	1	12	8	4	-	1

Adult persons sentenced based on final and enforceable judgements and conditional discontinuance of proceedings pursuant to relevant provisions of the Penal Code in 2006

Legal qualification Article of the Penal Code	Total convictions and conditional discontinuance	Including: Convicts								
		Including: Convicts								
					Including: Deprivation of liberty					
		Total	Only a fine	Restriction of liberty	Total	Up to 11 months	1 year	>1 year <2 years	Other penal measures	Conditional discontinuance
119, § 1	13	13	-	1	12	4	1	7	-	-
119, § 2	-	-	-	-	-	-	-	-	-	-
256	12	12	-	4	8	8	-	-	-	-
257	10	8	2	1	5	4	-	1	-	-

45. Statistical data for 2007 are currently being developed.

Measures taken in order to prosecute hate crimes

46. According to the data provided by appeal prosecutors' offices, in 2007, a total of 62 proceedings were conducted in matters of crimes committed due to racist or xenophobic reasons (art. 119, para. 1 or 2, of the Penal Code, art. 256 of the Penal Code and art. 257 of the Penal Code), including 41 new and 21 pending. From 62 proceedings, at the end of 2007:

(a) 9 cases were pending;

(b) In 19 matters bills of indictment were lodged against 35 persons;

(c) 25 matters were discontinued, including due to failure to identify a perpetrator (11 matters), due to failure to identify prerequisites of a crime (8 matters), due to lack of data sufficiently justifying the suspicion that the crime was committed (4 matters), due to the statute of limitation (1 matter), due to insanity of the perpetrator (1 matter).

47. None of the matters was discontinued due to insignificant social noxiousness of the act, and it was only in 4 matters that institution of preliminary proceedings was refused. Moreover, 1 matter ended by being transferred to a Family and Juvenile Court, 2 matters were referred to court in a summary procedure, and 2 matters were suspended.

48. What needs emphasizing is a growing trend of this type of crime detection – out of 62 proceedings conducted in 2007, in 25 charges were submitted to 50 persons.

49. Positive evaluation should be afforded to reaction of prosecutors to the most serious racial crimes. In 4 matters against 10 suspects, the strictest preventive measures were applied – detention on remand, in 5 matters also other measures, not restricting freedom, were applied, such as police supervision, ban on leaving the country and property security, in total against 12 persons.

50. A greater level of crime detection is also demonstrated by data concerning the number of matters discontinued due to failure to identify perpetrators – there were 11 such matters out of 53 completed matters. At this point, we should note that in 2006, only 12 bills of indictment were lodged, and no less than 15 matters were discontinued due to failure to identify perpetrators. The above data indicate that the prosecuting bodies pay more and more attention to the effective prosecution of this type of crimes.

51. We should also emphasize the fact that the National Prosecutor's Office is implementing the provisions of the National Programme of Counteracting Racial Discrimination, Xenophobia and Related Intolerance, developed for 2004-2009, as part of which Appeal Prosecutors' Offices were instructed to:

(a) Ensure regular monitoring by circuit prosecutors' offices of matters of racial and ethnic crimes by extending official supervision upon them in order to eliminate hasty refusal of institution of preliminary proceedings or discontinuance of the same due to insignificant social noxiousness of such crimes; and

(b) Ensure periodic investigation by appeal prosecutors' offices (once in a quarter) of matters of this category ended with a refusal to institute preliminary proceedings or discontinuance of the same and performance of the evaluation of justification of such decisions, and then providing the Preliminary Proceedings Bureau of the National Prosecutor's Office with information on results of the investigation and undertaken measures.

52. With reference to the above tasks, all substantive decisions of prosecutors' offices in the form of final and enforceable decisions on refusal to institute preliminary proceedings and discontinuance of preliminary proceedings are examined from the point of view of their justification, and incorrect decisions are eliminated by giving subordinate prosecutors instructions to institute or resume the conduct of proceedings ended in such final and enforceable manner, and to continue them in an appropriate direction.

53. For instance, in 2006, out of 28 examined matters in which the proceedings were discontinued or institution of proceedings was refused, appeal prosecutors' offices evaluated 21 decisions to be correct, 5 were considered to be premature, and in one case, an instruction was given to undertake actions under article 327, paragraph 3 of the Code of Criminal Procedure due to the fact that new circumstances occurred in the matter. In another case the decision on discontinuance was considered to be obviously unjustified and therefore, according to article 521 of the Code of Criminal Procedure, a motion was written to the General Prosecutor for cassation of the final and enforceable judgement of the court.

54. On the other hand, in 2007, out of 27 matters investigated by superior prosecutors' offices ended with final and enforceable decisions on discontinuance of preliminary proceedings and refusal to institute proceedings, in 21 matters substantive decisions were considered to be justified and in 6 matters to be unjustified.